THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.16282 OF 2007

DATED 31st JULY, 2007

BETWEEN:

Adapa Bheema Raju

… Petitioner

AND

Government of Andhra Pradesh, rep.by its Principal Secretary, Panchayat Raj Department, Secretariat, Hyderabad, and others.

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.16282 OF 2007

ORDER:

The petitioner was elected as Member of twelfth ward of Viravada Gram Panchayat on 02.08.2006. He was elected as Upa Sarpanch subsequently. Before he contested to Gram Panchayat, he was one of the Directors of Central Bank of India Farmers Service Cooperative Society, Pithapuram in East Godavari District (hereafter called, Farmers Society). He allegedly resigned for the said office on 03.08.2006, but the same is yet to be accepted. Be that as it is, the fourth respondent gave a complaint on 07.03.2007 alleging that the petitioner incurred disqualification under Section 18(1) of A.P.Panchayat Raj Act, 1994 (the Act, for brevity). When the same was not considered by District Panchayat Officer, it appears fourth respondent filed W.P.No.12729 of 2007. The same was disposed of by this Court observing that representation of the petitioner may be considered. Thereafter, the second respondent issued intimation in Roc.No.581/2006–A4, dated 23.07.2007 informing the petitioner that as he is holding office of Upa Sarpanch as well as Director of Farmers Society, he is disqualified under Section 18(1) of the Act. Aggrieved by the same, present writ petition is filed.

After hearing learned counsel for petitioner, learned Assistant Government Pleader for Panchayat Raj, this Court is of considered opinion that the writ petition is wholly misconceived. Impugned intimation, dated 23.07.2007, is in accordance with Section 22 of the Act. According to the said provision, when any election is made that elected member of Gram Panchayat incurs disqualification either under Sections 17, 18, 19 or 20 of the Act, the District Panchayat Officer has to issue intimation to that effect and the elected member is given two months time to seek a decision from the District Collector. The impugned order/intimation is precisely one that falls within the ambit of Section 22(1) of the Act. The same cannot be treated as disqualifying the petitioner. Indeed, as rightly pointed out by learned Assistant Government Pleader, the second respondent has no authority to pass an order of disqualification. In **N.Tirupataiah v. District Panchayat Officer, Nellore**[1], this Court has considered the scope of Section 22 of the Act. Paragraphs 8 and 9 of the reported judgment are relevant and read as under.

> An analysis of above provision would show that i) any voter or authority may make allegation in writing that a

member or a sarpanch of Gram Panchayat is not qualified under Sections 17 to 20 of the Act; ii) such an allegation in writing has to be made to the executive authority, which according to Section 2(12) means the panchayat secretary appointed to each Gram Panchayat[2]; iii) on receipt of such complaint in writing, the executive authority has to inform the District Panchayat Officer, who in turn will send an intimation to the member or sarpanch, who allegedly incurred the disqualification; iv) on receipt of such intimation, if there is any dispute as to disqualification alleged, such member or any other member of the Gram Panchayat, or panchayat secretary or the Commissioner, are entitled to apply to the District Court for a decision as to whether a member or sarpanch incurred disqualification and v) such application to the District Court has to be made within a period of two months from the date on which such intimation is given or doubt is entertained.

A plain reading would suggest that the complainant is not given any liberty to move an application to the District Court. Only four categories of persons or agencies, namely, a) the member, who received the intimation; b) any other member; c) the panchayat secretary (executive authority) on a direction of the Gram Panchayat and d) the Commissioner of Panchayat, are entitled to apply to the District Court for a decision. When the whole exercise is initiated at the instance of a "person" i.e. any resident of Panchayat, can it be said that the legislature purportedly intended to deny an opportunity to complainant to approach the District Court when none (sic. any) of the four categories of persons fails to initiate action before the Court? Strict interpretation of the text of the legislation compels one to answer the question in the affirmative but that would render the opportunity given to any person to complain about the disqualification incurred by a member or sarpanch, an empty formality if such a person is not given an opportunity to go to the Court and seek a decision as to whether the elected person against whom the complaint is made incurred disqualification or not. In a situation of this nature, the provision calls for purposive interpretation. The principle of purposive interpretation requires the Court to interpret legislative provision in such a manner, which ensures the proper exercise of a right by the person on whom such right is given and in consonance with the object with which a provision is enacted.

In view of the above, the writ petition is misconceived. The petitioner is given liberty to file appropriate application before the District Court, Rajahmundry and seek a decision as to whether he incurs any disqualification under Section 18(1) of the Act in view of the allegations made by fourth respondent. Needless to observe that if

such an application is filed, by reason of section 22(2) of the Act, till a decision is given by the District Court, the petitioner shall be entitled to continue as Upa Sarpanch as if he is qualified.

The writ petition, with the above observations, is dismissed. No costs.

(V.V.S.RAO,J)

31.07.2007.
pln

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[1] 2005 (1) ALT 426

[2] As amended by A.P.Act No.22 of 2002 with effect from 20.06.2002